the evidence offered by the complainant no indication that the appellant had met the woman before she and her husband had parted nor is there any evidence that the appellant enticed the woman in any way whatsoever. Indeed the evidence in cross-examination suggests that it was she who sought him out and not he who sought her out. In her evidence she said :—

"I asked him whether I could stay with him. I don't remember what the first accused replied to my first request . . . . Now I can remember that the first accused objected to my first request. I pleaded with the first accused to take me for 2 or 3 days."

At the close of the complainant's case there was very clear evidence that the woman had seduced the appellant but absolutely no evidence of any kind whatsoever that the appellant had enticed the woman.

For the above reasons I allowed the appeal and ordered that if the sum of $150 being $100 costs and $50 compensation has been paid by the appellant to the complainant then that sum must be repaid by the complainant to the appellant.

Appeal allowed.

TEOH SIEW LEAN (f) & ANOR. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Rigby J.) November 8, 1957]

[Penang — Criminal Appeal No. 38 of 1957]

Women and Girls Protection — Brothel — Keeping or maintaining premises — Solitary instance of user — No evidence of habitual or past user of premises for purpose of prostitution — Women and Girls Protection Ordinance (Cap. 33) s. 8(a).

Evidence — Agent provocateur — Use of police constable as.

Hotel — Distinction to be made between, and house used solely as a brothel — Proof.

In order to sustain a conviction for keeping or maintaining premises as a brothel contrary to the provisions of section 8(a) of the Women and Girls Protection Ordinance of the Straits Settlements, it must be proved that the premises were habitually used for the purpose of prostitution. A solitary instance of user by two or more women or girls is not sufficient.

In this case the convictions and sentences of the appellants were quashed and set aside on the ground that there was no satisfactory evidence as to habitual or past user of the premises for the purpose of prostitution. The learned Judge also criticised the Police for using Police Constables as agents provocateurs in order to procure and/or provide evidence against the hotel owners and/or management. It was also pointed out that a distinction must be made between a house or other place that is used simply and solely as a brothel and for no other avowed purpose, and premises which are ostensibly and genuinely used as a hotel or lodging house but which, or part of which, are used as a brothel. In the former case there is an absolute liability on any person who takes part in the assistance or management of such a place whereas in the latter case some degree of knowledge whether express or by imputation, that the premises were being used as a brothel must be proved against the person whom it is sought to charge.

Cases referred to :—

(1) *Brannan v. Peek* (1948) 1 K.B. 68, 72.
(2) *Michi & Anoyu v. R.* (1934) M.L.J. 11.
(3) *Tan Poh Whatt v. Public Prosecutor* (1940) M.L.J. 172.
(4) *Lee Siew Ean v. R.* (1956) M.L.J. 50.
(5) *Clarke v. Periam* 2 Atk. 337.

MAGISTRATE'S CRIMINAL APPEAL.

R. P. S. Rajasooria for the 1st appellant.

Lim Kean Siew for the 2nd appellant.

F. C. Cooke (Federal Counsel) for the respondent.

Rigby J. : — The 1st appellant in this case was charged with that she on the night of the 10th July, 1956, at about 9.40 p.m., at the Rex Hotel, Burmah Road, Penang, kept the said premises as a brothel, contrary to the provisions of section 8(a) of the Women and Girls Protection Ordinance (Cap. 33 of the Laws of the Straits Settlements).

The 2nd appellant was similarly charged under the same sub-section with assisting in the management of those premises as a brothel at the same time.

The appellants are mother and daughter respectively. The 1st appellant was the owner and licensee of the Hotel. She lived with her husband at Pulau Tikus, but there was evidence that she was daily at the Hotel and, indeed, according to the evidence of one of the prosecution witnesses, an employee in the Hotel, it was his duty to hand over to her the day's takings at midnight each night.

The 2nd appellant assisted in the Hotel and, according to the testimony of the 1st appellant, her mother, she was supposed to take charge of the Hotel when the 1st appellant was not herself on the premises. Indeed, the 1st appellant stated :—

"One of us would always be at the Hotel. One of us slept at the Hotel".

The facts established that on the night of the 10th July, 1956, three Malay Police Constables, acting on express instructions given to them earlier that evening, proceeded to the Rex Hotel. The instructions given to them were that each of them was to endeavour to pick up a girl — a prostitute — on the premises, pay for her services and take her into one of the Hotel bedrooms. According to the evidence of one of the Police Constables, he was actually instructed by Police Inspector Kanda Singh, the Officer who gave them these instruction, to have sexual intercourse ("main perempuan") with the girl he picked up. Each of them was provided with $10 to pay the girl.

Some time later that evening a Police party raided the Hotel. Each of the three Police Constables was

found in a separate bedroom. Each of them was with a girl, and all, both males and females, were in various stages of undress.

The Police Constables were quite clearly agents provocateurs expressly instructed to act as such. I have already commented adversely upon what I deem to be the impropriety of the Police authorities in sending Policemen into hotels for the express purpose of actively soliciting women to enter hotel bedrooms to have intercourse — or, to all intents and purposes, to be ready and willing to have intercourse — with them on the premises in order to provide evidence against the hotel owners and/or management. I make no apology for again quoting the words of the Lord Chief Justice of England :—

"I hope the day is far distant when it will become common practice in this country for police officers, who are sent into premises for the purpose of detecting crime, to be told to commit an offence themselves for the purpose of getting evidence against another person." **Brannan v. Peek**[1].

One can only hope that this wholly reprehensible and disgusting practice will cease — if it has not already ceased.

The three women found in the three rooms with the three Policemen described themselves as waitresses working at the Hotel. They were all residents at the Hotel. Upon the evidence given before the Magistrate, it is abundantly clear that the women were, in fact, prostitutes, though they denied that they practised their profession on the Hotel premises. In effect, though not in actual words, they preferred to describe themselves as "call girls" carrying on their profession at various other addresses to which they might be "called" for the purpose. Two of the three Policemen admitted that they had frequented brothels in Kuala Lumpur and Singapore and engaged prostitutes on their own account. On the simple issue of credibility, despite the denials of two of the Police Constables, it is not without some significance that two of these girls, when explaining why they had gone to the rooms with the Police Constables, expressly said that not only did they know at the time that they were Policemen but that they had previously been out with them, individually, on other occasions, and one of the girls said that she had previously had sexual intercourse with one of the three Policemen. According to the testimony of these girls, it was in those circumstances and at the express request of the Policemen that they consented to accompany them to the bedrooms.

However, whatever the circumstances in which these girls were asked, induced or persuaded to accompany the Policemen to the Hotel bedrooms, it is abundantly clear that they were in those rooms with the Policemen for the purpose of prostitution. It is equally clear, if the evidence of the Policemen is to be believed — and the learned Magistrate did believe it — that in each case at the time of entering the bedroom with the girl the money for her services, to wit, $10, was asked for, and paid to, the Hotel clerk, Khoo Kim Pang individually by each of the three Policemen. Indeed, it is a matter of some surprise to me that it was not considered necessary to charge him with this offence If the object of not charging him was in order that he might prove useful as a prosecution witness, then the prosecution failed most conspicuously in its purpose His evidence, so far from assisting the prosecution, went a long way towards destroying its case. Nor is there any indication — as often occurs — that he had gone back on his original statement to the Police, assuming he made one, since there is nothing on the record to suggest that the prosecution asked the Court to treat him as a hostile witness.

A brothel is defined in the Ordinance as :—

"a house or place occupied or used by any two or more women or girls for the purpose of prostitution".

I have already said that by whatever means and in whatever circumstances these women were procured there was, of course, abundant evidence that they were in the bedrooms of that Hotel that night for the purpose of prostitution.

But by a long line of cases (*Michi & Anoyu v. R.*[2]; *Tan Poh Whatt v. Public Prosecutor*[3]; *Lee Siew Ean v. Regina*[4]) the Courts of the Federation and the Colony of Singapore, following English law, have held that the user required to sustain a conviction for keeping or maintaining premises as a brothel must be habitual user of those premises for the purpose of prostitution. "Proof of solitary instance of user by two or more women and girls is not sufficient to sustain a conviction. The user must be habitual in either case, not a mere solitary act. (*Per* Poyser C.J. in *Tan Poh Whatt's case*, quoting with approval the decision of Sproule, Ag. C.J. in *Michi & Anoyu's case*).

The prosecution clearly appreciated the necessity of adducing additional evidence to show habitual user of these premises for the purpose of prostitution and called two Police Constables who purported to have kept watch on these premises between the 4th and the 9th July and gave evidence as to what they had seen. That evidence, at best, aroused suspicion as to the user of the premises but was of a somewhat vague and unsatisfactory nature.

As to that evidence the learned Magistrate said :—

"I was not convinced by the evidence of results of the observation kept by the Police on the Hotel during the period 4th July to 9th July, that prostitution was actually taking place at the Hotel during that period."

Having said that, the learned Magistrate, unfortunately, made no attempt whatsoever in his grounds of judgment to consider what other evidence, if any, there was in support of the necessary proof of habitual user of those premises for the purpose of prostitution.

The only other evidence called before the learned Magistrate which might have assisted the prosecution in establishing that the premises were used as a brothel was the Hotel Register. This book was seized by a Senior Police Officer during the course of the raid and subsequently produced in evidence by him at the trial as an exhibit. The Register might well more properly have been put in as an exhibit by the person in whose custody it was kept and who was responsible for making the entries therein and/or ensuring that the necessary particulars were properly recorded in his presence. There was evidence before the Court that the Register was, in fact, kept and maintained by an old man, who worked on the premises. He was not called as a witness. But it appears that the Police Officer who produced the Register had first checked it and made a list of the names of males who were recorded in the Register as having occupied on various dates the rooms which these three girls were alleged to have occupied at the Hotel as permanent residents. These lists — three of them — were produced in Court as exhibits. They purport to be extracts from the Hotel Register and at the top of each list is stated the name of the girl concerned, the number of the room, the date of arrival and lastly the words "Males occupying same room". These documents were obviously highly prejudicial to the accused and should never have been admitted in evidence in that form. However, not only are they highly prejudicial in form but one at least of them — Exhibit P.2 B — is inaccurate. The document purports to show the girl Lat binti Sa'ad as occupying Room No 4. This is neither the room in which she was found with one of the Policemen at the time of the raid — which was Room No. 14 — nor the room which she occupied as a permanent resident — which was Room No. 22. For what it was worth, her simple explanation as to why she had accompanied the Policeman to Room No. 14 was because she knew that he was a Policeman and he asked her to go there with him.

The entries in the remaining two lists relate to dates between March and June, 1956. There was no evidence before the Court that the two women, or either of them, were occupying the rooms on those dates. Many of the names shown in these lists were Penang registration identity cards. No attempt appears to have been made to call anyone of those persons as a witness. Assuming for a moment that such evidence was admissible as not being too remote in time to the date in the charge — the 20th July, 1956 — if any two or more of the persons, the names of whom are shown in the lists as appearing in the Hotel Register, had been called as witnesses and had been in a position to say that they shared those rooms on the dates shown on the Register with the women concerned, such evidence would have gone a very long way towards establishing conclusively not only that the women were prostitutes but that the premises were being habitually used for the purpose of prostitution. However, no such evidence was called.

In my view, therefore, the contents of the Hotel Register — and it was admitted by the 1st appellant herself in cross-examination that it was the Hotel Register — in the absence of other oral or extrinsic proof, does not establish habitual user of the premises for the purpose of prostitution. It is significant that the learned Magistrate himself has made no reference whatsoever in his grounds of judgment to the Hotel Register so that it is not apparent what weight or importance, if any, he attached to it.

For these reasons I am, therefore, of the opinion that in the absence of any satisfactory evidence as to habitual or past user of these premises for the purpose of prostitution, these appeals must be allowed, the convictions quashed and the sentences set aside.

Before I conclude, I would make these observations. Mr Lim Kean Siew, for the 2nd appellant, drew attention to the particulars of the charge alleging the commission of the offence "on the 10th of July, 1956, at about 9.40 p.m.". To establish the offence it was necessary to prove past user and it was for this purpose that evidence was given by the two Policemen as to what happened between the 4th and the 9th July, and the Hotel Register itself was put in. Mr. Lim Kean Siew contended that the accused were entitled to know during what period the offence was alleged to have been committed and he referred the Court to the precedent appearing in *Archbold's* Criminal Pleading, Evidence and Practice, 33rd edition, page 1406, for an indictment for the common law offence of keeping a bawdy-house. Keeping a brothel is, of course, a cumulative offence consisting of a series of acts. To quote the words of Lord Hardwicke in *Clarke v. Periam*[5] :—

> "Though the charge (in the indictment 'without charging any particular fact') is general, yet at the trial you may give in evidence particular facts, and the particular time of doing them."

I would, however, express the opinion — and it is no more than an opinion — that it is certainly fairer to the defence — and, and in my view, in the interests of the prosecution itself — that where charges of this nature are brought the formal charge should specify

the dates during which it is alleged that the offence was committed.

The appellants were charged under section 8(a) of the Women and Girls Protection Ordinance. Section 8 enacts :—

"8. Any person who —

(a) keeps or manages or acts or assists in the management of a brothel; or

(b) being the tenant, lessee, occupier, or the person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel; or

(c) being the owner of any premises, or the agent of such owner, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel;

shall be liable to imprisonment of either description for any term not exceeding six months or to a fine not exceeding five hundred dollars, or to both; and on a second or subsequent conviction shall be liable to imprisonment of either description for any term not exceeding twelve months or to a fine not exceeding one thousand dollars, or to both."

The sub-sections, to my mind, draw a clear distinction between a house or other place that is used simply and solely as a brothel and for no other avowed purpose — as in section 8(a) — and premises which are ostensibly and genuinely used, for example as a hotel or lodging house but which, or part of which, are used as a brothel — as in section 8(b) and 8(c).

The importance of the distinction lies in the fact that under section 8(a) there is an absolute liability on any person who takes any part in the assistance or management of such a place, whereas under sections 8(b) and 8(c) some degree of knowledge, whether express or by imputation, that the premises were being used as a brothel must be proved against the person who it is sought to charge. As to proof of knowledge by imputation, see the case of *Tan Poh Whatt v. Public Prosecutor*[3].

In the instant case there was, of course, clear evidence that the premises were a hotel duly licensed as such, and that some degree of legitimate trade and commerce of the Hotel, in the ordinary course of its business was going on within its precincts. In my view, therefore, the charge was wrongly laid under section 8(a) and should have been brought under section 8(b). The cases of *Michi & Anoyu v. Rex*[2] and *Tan Poh Whatt v. Public Prosecutor*[3] would seem to support this view. In the former case the premises in question were a hotel and in the latter a lodging house. In both cases the charges were brought under section 7(b) (now section 8(b)).

In conclusion I regret to say that I must draw attention to what I consider the scandalous delay in the disposal and determination of this case.

The complaint was lodged on the 10th July 1956. The accused appeared in Court on the 20th September, 1956 and pleaded not guilty to the charges.

After various adjournments the case came on for the trial on the 28th December, 1956.

It was finally concluded and the accused convicted on the 26th February, 1957.

It took, therefore, a matter of over seven months for this case to be determined. No adequate or satisfactory reason is disclosed upon the record to offer any explanation whatsoever for the undue length of time taken in its determination. The effect of such delay is not only to dull the memory of potential witnesses as to the details of the incidents concerning which they are called upon to testify but also — and of far more sinister importance in this country — to afford an opportunity to evil-minded persons to tamper with and improperly influence actual or potential, but reluctant, witnesses. Inexcusable delays of this nature can do nothing but bring the due and proper administration of justice into contempt and disrepute.

I regret that I should have to add still further to these criticisms by pointing out that it apparently took the learned Magistrate just under six months — from the 27th February, 1957, when the Notice of Appeal was lodged, to the 10th August, 1957, — to prepare and sign his extremely brief typewritten grounds of judgment.

I have reluctantly considered it necessary to allow these appeals and set aside the convictions and sentences. However, I would again draw attention to the fact that the evidence as accepted by the learned Magistrate established that the three women, admitted prostitutes, were found in the rooms of this Hotel when it was raided by the Police; that they were there for the purpose of prostitution; and that they had been conducted there by an employee of the Hotel to whom the moneys for their services had been paid by the three Policemen. No doubt these are matters that will be brought to the notice of the proper Licensing Authority if and when the management of this Hotel thinks fit to apply for a renewal of its licence.

Appeal allowed.

ANTHONY v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) July 18, 1957]

[K. L. — Criminal Appeal No. 23 of 1957]

Criminal procedure — Police investigation before Public Prosecutor's order to investigate — Statement made — Whether made in course of judicial proceeding — Criminal Procedure Code (Cap. 6), ss. 108(ii) and 112 — Penal Code, s. 193.